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United States Attorney
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June 3, 2008

By Hand

Hon. Lawrence M. McKenna
United States District Judge
United States Courthouse
500 Pearl St., Room 1640
New York, NY 10007

By Facsimile – (212) 805-6712

Hon. Kevin Nathaniel Fox
United States Magistrate Judge
United States Courthouse
500 Pearl St., Room 540
New York, NY 10007

MEMO ENDORSED

(p. 3)

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JUN - 4 2008

LAWRENCE M. MCKENNA
USDI SDNY

Milanes v. Chertoff, 08 Civ. 2354 (LMM) (KNF)

Dear Judge McKenna and Judge Fox:

The Government respectfully submits this letter to request certain modifications to the upcoming schedule in this case, for the reasons discussed below. As discussed below, subject to one condition, these requested modifications have been consented to by plaintiffs. We are addressing this letter to both Judge McKenna and Judge Fox, because the modifications effect dates established by separate orders issued by each of your honors.

The agreed revised schedule listed below reflects the results of a meet and confer process between the Government and plaintiffs. The Government seeks a one-week extension of the date for service of the Government's forthcoming papers and a short extension of the deadline for completing its production of hard copy documents (four days as to most documents; eight as to the documents of USCIS Acting Director Jonathan Scharfen ("Scharfen")). The Government seeks these extensions because, despite its best efforts, the Government is unable to meet the hard-copy document deadline and, moreover, finds that the three major projects at hand – reviewing and producing hard-copy documents; reviewing and producing electronic-source documents; and drafting its papers – are each being made substantially more difficult because of the conflict and overlapping resource and personnel requirements for each. These short extensions are sought by the Government to enable it to produce the hard-copy documents, simultaneously prepare for production of thousands of electronic-source documents, and to prepare its papers for the Court. The Government does not believe that these short extensions will prejudice plaintiffs or adversely effect the efficient processing of this case.

In the meet-and-confer concerning the Government's requests, the plaintiffs consented to the Government's proposed modifications to the schedule subject to two conditions. Plaintiffs' first condition was that the parties simultaneously propose certain corresponding modifications be made to later dates in the schedule and add further specificity regarding the timing of the Government's forthcoming production of electronic documents. After discussion between the parties, the revised dates were consented to by both parties. Plaintiffs' second condition is that they only consent to the proposed revisions to the extent that the Court's calendar will allow for a preliminary injunction hearing to be held reasonably soon after the revised "ready" date, listed below.

The following is the proposed new schedule. Where a corresponding current deadline exists (as a result of the combined effect of Judge McKenna's May 19, 2008 Order and Judge Fox's May 28, 2008 Order), it is listed as well for reference.

		Current Schedule	Proposed Revised Schedule
1.	Government to Complete Production of Hard-Copy Documents	June 2, 2008	June 6, 2008 (all hard copy documents except those of Scharfen): June 10, 2008 (hard copy documents of Scharfen)
2.	Service of Privilege Log for Hard Copy Documents		June 9, 2008 (for hard copy documents except those of Scharfen) June 10, 2008 (for hard copy documents of Scharfen)
3.	Government to Provide Plaintiffs with Dates for Completion of Production of Documents from Electronic-Sources		June 9, 2008
4.	Disclosure of Expert Witnesses	June 6, 2008	June 6, 2008 (no change)
5.	Government's Papers Due	June 6, 2008	June 13, 2008
6.	Government's Response to Interrogatories No. 5 and 6 to USCIS	June 9, 2008	June 9, 2008 (no change)

		Current Schedule	Proposed Revised Schedule
7.	Completion of Depositions	June 19, 2008	June 27, 2008
8.	Plaintiffs' Papers Due	June 23, 2008	July 2, 2008
9.	Date When Parties Shall Be Ready for a Preliminary Injunction Hearing	June 25, 2008	July 7, 2008

As noted above, plaintiffs consent to this proposed revised schedule to the extent that a preliminary injunction hearing could be granted reasonably soon after the July 7, 2008 "ready" date. Accordingly, to the extent that is the case, the Government respectfully requests that this proposed revised schedule be entered on consent.

To the extent that, because of the Court's schedule, plaintiffs' condition concerning the hearing date cannot be satisfied, and therefore plaintiffs are not deemed to consent to the above modifications, the Government nonetheless seeks the requested extensions concerning its hard-copy document production and briefing deadline. Under this circumstance, the parties jointly request an opportunity promptly to submit letters concerning the requested extensions.

We thank the Court for its consideration of these matters.

*The above schedule is approved & so ordered.
The preliminary injunction hearing will be held on 7/9/08 at 9:30 A.M. (and extended to 7/10/08, if necessary). So ordered.*

M.W.Y.
6/5/08

Respectfully,

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